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The Sugar Act of 1937
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of collection, and the higher mortality experience result in a rate proportionately higher than the larger policies.[83] A sound social attitude would make available at least a minimum of insurance protection for those with the greatest need. Short of federal or state operated plans, which may provide the most desirable way out,[84] tax exemption of low cost insurance would be an important step in encouraging forms of insurance suitable for wage-earners. Thus, the test would shift from its present irrational basis to one more in accord with the social function of insurance. The lower price policies of the old line companies might also be exempted on a satisfactory showing that they were passing the tax savings on to the policy holders in the form of lower premiums.[85] Some of the more advanced states might voluntarily formulate such a broad tax policy in their own insurance law revision, but the framing of uniform legislation by an organization like the National Convention of Insurance Commissioners would go furthest toward reaching the eventual goal. Since much of fraternal insurance already is adapted to the poorer classes,[86] the fraternal benefit societies could be expected to lend their assistance in securing the passage of such legislation.

THE SUGAR ACT OF 1937

THE SUGAR Act of 1937,[1] re-enacting the fundamental provisions of the Jones-Costigan Amendment of 1934,[2] indicates that the latter legislation, enacted as an emergency measure, is to become permanent governmental policy. The Act raises anew the problem of regulating a product that is more completely dominated by governmental control the world over than any other basic commodity.[3] Its importance and relative cheapness, the ease with which its few channels of production may be controlled, its specialized nature rendering protection once granted hard to discontinue, and its importance in military strategy[4] make sugar peculiarly susceptible to a policy

83. See Hobbs, *The Role of the Insurance Commissioner in Industrial Life Insurance,* (1935) 2 LAW & CONTEMP. PROB. 49; Myers, *The Effect of the Social Security Act on the Life Insurance Needs of Labor* (1937) 45 J. POL. ECON. 681.

84. See Taylor, *The Case for Government Life Insurance* (1935) 2 LAW & CONTEMP. PROB. 99; Oglesby, *The Case Against Government Life Insurance, id.* at 117.

85. Since much of the uncertainty with regard to fraternals arises from the difficulty of classifying their "policies," the standardized character of old line insurance policies might well eliminate the accounting complications mentioned *supra,* p. 977.

86. See table of typical rates in 42 STATISTICS FRATERNAL SOCIETIES (1936) 7.

1. 50 STAT. 903, 7 U. S. C. § 1100 *et seq.* (Supp. 1937).

2. 48 STAT. 672, 7 U. S. C. § 608(a) (1934).

3. For an account of the proration of sugar production in several foreign countries, see WILLCOX, CAN INDUSTRY GOVERN ITSELF? (1936).

4. Stimulation of domestic production of beet sugar by trade barriers and direct subsidies is an essential feature of present European military strategy and rearmament

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of economic nationalism. But each attempt at artificial control of production has resulted in frequent and aggravated dislocation of world markets, necessitating in turn more drastic and far-reaching measures. In the United States, virtually the last of the great nations to undertake complete control of the production of sugar, social, economic, political, and legal considerations are all involved to a degree which makes analysis difficult, but which also makes examination and evaluation of real contemporary import.

The sugar industry in this country has been developed chiefly by the application of artificial stimuli. The beet sugar industry, starting just before the turn of the century, has undergone a mushroom growth as a result of nearly fifty years of protective tariffs,[5] assistance in the form of experimentation and research by the Department of Agriculture,[6] and the reclamation and irrigation of large areas in the West.[7] Louisiana has a cane sugar industry entirely dependent upon tariff protection which has long struggled against unfavorable climatic and soil conditions. Florida alone of the sugar producing areas in this country is apparently able to produce sugar without government subsidy, but its small cane sugar industry is of very recent origin.[8] Hawaii, Puerto Rico, and the Philippines, shipping sugar to the continental United States free of duty, have become virtually one-crop countries, completely dependent upon continental consumption.[9] And Cuba, receiving a 20% preferential tariff rate under the Reciprocity Treaty of 1903[10] and naturally adapted to the production of cane sugar, long ago achieved a dominating position in the American market.[11]

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programs. Even England, rebuilding her navy to protect her overseas trade, is at the same time subsidizing her beet sugar industry against the day when her navy will no longer be able to protect food imports. See Janeway, *Sugar, A Case History,* ASIA, Aug. 1937, p. 588.

5. There has been a tariff on sugar ever since 1789, but until the McKinley Tariff of 1890 it was for revenue only. Beginning in that year a direct bounty of two cents per pound was paid to domestic producers of sugar. The constitutionality of the bounty was argued in Field v. Clark, 143 U. S. 649 (1892), but the Supreme Court expressly refused to decide that question. Thirty millions in subsidies were expended before the bounty was repealed and the protective tariff reinstated in 1894.

6. See TAUSSIG, SOME ASPECTS OF THE TARIFF QUESTION (3rd ed. 1931) 80.

7. See *Hearings Before Committee on Finance on S. 2732,* 73d Cong., 2nd Sess. (1934) 136.

8. For an account of the history and development of the cane sugar industry in Louisiana and Florida, see DALTON, SUGAR, A CASE STUDY OF GOVERNMENT CONTROL (1937) 166 *et seq.*

9. See generally DALTON, *op. cit. supra* note 8, at 188 *et seq.;* UNITED STATES TARIFF COMM., REPORT ON UNITED STATES-PHILIPPINE TRADE (1937) 6 *et seq.,* 45 *et seq.*

10. 33 STAT. 3, 2136 (1903).

11. For brief accounts of the early history of the Cuban sugar industry, see JENKS, OUR CUBAN COLONY (1928) 18 *et seq.,* 128 *et seq.;* FOREIGN POLICY ASSOC., REPORT OF THE COMM. ON CUBAN AFFAIRS (1935) 218 *et seq.;* WRIGHT, THE CUBAN SITUATION AND OUR TREATY RELATIONS (1931) 48 *et seq.*

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Sugar received the full impact of the economic dislocation of the war. Both the United States and Cuba had striven to relieve the serious shortage among the allied nations.[12] Farmers were encouraged to plant sugar beets as a patriotic measure; American capital poured into Cuba to build and operate new sugar mills;[13] and production was stimulated in the insular areas.[14] During the following decade, production far outran consumption, and as surpluses accumulated, prices gradually dropped to unremunerative levels.[15] Meanwhile an increase in European beet sugar production to the pre-war norm drastically reduced the world market for Cuban sugar which the war had developed.[16] Nevertheless, Cuban production increased steadily, for many of the Cuban sugar properties which had fallen into American hands during the speculative bubble and sharp deflation immediately following the Armistice[17] were being operated by more efficient methods and machinery.[18] In this country the tariff on sugar was raised three times to protect the domestic industry[19]. Disproportionate returns to the insular areas, where

12. The tendency to use beet fields for battle fields reduced European beet sugar production from over eight million long tons in 1912–13 to two and one half million tons in 1919–1920. Expressed as a percentage of the world's supply, the drop was from 45% to 17%. See ELLIS, THE TARIFF ON SUGAR (1933) 29.

13. JENKS, *op. cit. supra* note 11, at 178 *et seq.*; WRIGHT, *op. cit. supra* note 11, at 53.

14. For a complete treatment of wartime governmental control of sugar, see BERNHARDT, GOVERNMENT CONTROL OF THE SUGAR INDUSTRY IN THE UNITED STATES (1920).

15. The average annual price per pound of duty-paid raw sugar gradually declined from 6.98 cents in 1923 to 2.80 cents in 1932. UNITED STATES TARIFF COMM., REPORT TO THE PRESIDENT ON SUGAR (1934) 46.

16. But Cuba has continued to ship between 20% and 30% of her crop to countries other than the United States. This has been an important factor in the depression in world markets. ELLIS, *op. cit. supra* note 12, at 70.

17. Unwise demobilization of the government sugar control boards early in 1919 while sugar was ostensibly scarce unleashed a speculative boom known as the "Dance of the Millions" which carried the price of raw sugar from 9 cents per pound in February, 1920, to 22½ cents per pound in May, 1920, and back to 3¾ cents in December of the same year. The reaction brought on a financial and political crisis in Cuba during which the leading Cuban banks collapsed and control of a large share of Cuban enterprise passed into the hands of the New York banking houses. JENKS, *op. cit. supra* note 11, at 206 *et seq.*

18. Cuba increased its production of raw sugar nearly 30%, or over a million long tons, in the single year 1925. The crop was over five million tons and enough cane was planted to produce six million tons in 1926. ELLIS, *op. cit. supra* note 12, at 65.

19. The special session of Congress of 1921 and the regular session of the following year both raised the tariff on Cuban sugar as an incident of a larger plan to aid the already deflated peacetime American agriculture. Prices of refined sugar rose to wartime levels, and in 1923 the Tariff Commission investigated the duty under the flexible tariff provisions of the Tariff Act of 1922. It recommended a reduction to correspond to the difference in costs of production, but the President refused to take any action, thus effectively nullifying the theory of the flexible tariff insofar as sugar was concerned. See UNITED STATES TARIFF COMM., REPORT TO THE PRESIDENT ON SUGAR (1926) 216 *et seq.* In 1930, the Smoot-Hawley Tariff again raised the duty on Cuban sugar to a new high of two cents per pound.

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sugar could be produced more cheaply than on the continent, and a consequent increase in production, resulted. In the Philippines the situation was aggravated by a rapid series of improvements in the growing and grinding of cane. With the onset of the depression, consumption sharply declined, yet many American farmers turned to raising sugar beets, not because it was profitable, but because production of other basic agricultural commodities was relatively much less remunerative.[20] By 1932, the price of raw sugar had reached an all-time low.

Attempts to remedy the increasingly critical situation were varied in form and both legislative and coöperative in nature. As early as 1926, the Cuban government began a series of attempts to bolster the price of sugar,[21] none of which achieved any lasting success. In 1931, a New York lawyer, Thomas L. Chadbourne, attempted to effectuate an agreement to reduce production among the various areas supplying sugar to the American market. But domestic producers refused to coöperate, contending that the element of compulsion necessary to enforce conformity to the terms of the agreement was entirely lacking.[22] When it became apparent by 1933 that the protective tariff was a failure as applied to sugar,[23] the Secretary of Agriculture determined to use his licensing power under the Agricultural Adjustment Act to work out a plan with the industry.[24] Accordingly, representatives of all the producing areas and of the refining interests met at Washington during the summer of 1933. But the attempt to weld the demands of the most wide-

20. Since the price which domestic producers receive always includes the amount of the duty, the tariff constituted an irreducible minimum below which the price of sugar could not fall. In the case of other basic commodities with large exportable surpluses and little tariff protection, no such guarantee was enjoyed.

21. These included experiments with restricted production, delayed production, market quotas, pools, single selling and export organizations, and a valorization scheme. See FOREIGN POLICY ASSOC., REPORT, *op. cit. supra* note 11, at 240 *et seq.*; WRIGHT, *op. cit. supra* note 11, at 87 *et seq.*

22. The Chadbourne Committee continued to negotiate with the leading foreign sugar producing countries, and the result was an International Agreement signed at Brussels in May, 1931. Each signatory country was assigned an export quota and production was effectively reduced, but the objective of higher prices was never reached. The efforts of the signers, controlling but half the world's supply, were more than offset by increased production in the non-signatory countries—chiefly the United States and the British Empire. See generally ELLIS, *op. cit. supra* note 12, at 176 *et seq.*; FOREIGN POLICY ASSOC., REPORT, *op. cit. supra* note 11, at 244 *et seq.*; DE WILDE, SUGAR, AN INTERNATIONAL PROBLEM (1933).

23. The Tariff Commission itself acknowledged this to be the case, pointing out that prices had been dropping faster than the tariff could be raised, and stating that no increase in the tariff could alleviate the disastrous condition in which the industry found itself. The Commission's suggested solution was to limit the imports of sugar from Cuba and the Philippines. See REPORT, *op. cit. supra* note 15, at 25.

24. Both sugar beets and cane had been included in the original Agricultural Adjustment Act by the Senate, but had later been removed by the House. 77 CONG. REC. 1898 (1933).

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spread industry in America met insurmountable obstacles. The Cuban interests were inadequately represented, and it was impossible to obtain coöperation from the others. The assumption that the industry could act as a coherent whole was proved to be erroneous; the only way in which a final agreement was reached at all was by the simple but efficacious method of allocating production quotas with such generosity that the various interests were satisfied, but the objective of restricting the supply to enhance the price was rendered quite impossible of attainment.[25] In October, 1933, the Secretary of Agriculture, after conference with the President, rejected the agreement,[26] stating that it provided no effective means of production control and that it emphasized unduly the interests of sugar processors rather than the income of farmers.[27]

The rejection of the Stabilization Agreement caused a speculative reaction which depressed the American market still further; the industry was convinced that no betterment of general economic conditions could solve its problems. But by this time the Administration had again become actively interested both in the plight of the domestic producers and in the situation in Cuba, where a year of unparalleled economic and political upheaval had rendered it increasingly plain that the United States must in some manner come to Cuba's aid.[28] In a message to Congress in February, 1934,[29] the President recommended an amendment of the Agricultural Adjustment Act to include sugar beets and sugar cane, the imposition of a processing tax on sugar, the payment of benefits for crop restriction, the introduction of a quota system, and a reduction of the tariff on Cuban sugar. The result was the Jones-Costigan Amendment,[30] which naturally embodied these suggestions,[31] but also set quotas for refined sugar shipped from the insular

25. At the International Sugar Conference at London in May 1937, it was necessary to resort to the same procedure to come to an understanding. See Janeway, *loc. cit. supra* note 4.

26. In addition to production quotas for the various areas, the plan provided for a minimum price for raw sugar to be set by a Stabilization Board, for a loose sort of acreage control, and for the elimination of unfair competition in the sale of refined sugar. DALTON, *op. cit. supra* note 8, at 77 *et seq.*

27. See AGRICULTURAL ADJUSTMENT, REPORT OF THE ADMINISTRATION OF THE AGRICULTURAL ADJUSTMENT ACT, MAY 1933–FEB. 1934 (1934) 191.

28. Years of falling prices and shrinking markets were climaxed by the expulsion of Machado in August 1933, and a situation which approached anarchy. The current crop was the smallest since 1911; exports of sugar to the United States were at the lowest level since 1908; the value of all exports was equal to that of 1903. The alternative to military intervention was substantial economic assistance.

29. 78 CONG. REC. 2176 (1934).

30. 48 STAT. 672, 7 U. S. C. § 608(a) (1934).

31. Production quotas for the domestic beet and cane areas were set by the terms of the Act itself. Quotas for the other areas were to be set by the Secretary of Agriculture. The Secretary was further empowered to make estimates of consumption requirements as a basis for the quotas, to reallocate any portion of a quota which was not filled, to enter into crop restriction contracts with domestic and insular producers

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areas and Cuba.[32] The policy of protection through a tariff was combined with one of protection through a quota and benefit-payment system, and the burden of control was shifted from Congress to an Administrative department.

With the invalidation of the Agricultural Adjustment Act, crop restriction contracts, benefit payments, and the processing tax were discontinued. The quota limitations, however, were kept in force on the theory that the decision in the *Butler* case[33] did not affect those provisions of the law.[34] Congress debated the problem of regulation in the Spring of 1936, but its sole action was a joint resolution extending the quota restrictions through the year 1937.[35] Thus the whole problem came up for reconsideration at the last regular session of Congress. The President asked[36] for the retention of the quota system, an excise tax on sugar, a sliding scale of benefit payments to favor the smaller farmer,[37] and for uniform wage and hour requirements and a ban on child labor in the beet fields. The Department of Agriculture's bill, embodying these suggestions, leaving the production quotas about as they were, but removing the restrictions on the importation of refined sugar, was rejected. In the face of Administrative opposition which went to the length of a threatened Presidential veto,[38] the substituted bill that finally became law scaled down most of the major producing areas slightly in order to enlarge the quota for the domestic cane producers and restored the restrictions on imported refined sugar. The bill provided for an excise tax on sugar and for benefit payments to farmers conditioned on the elimination of child labor and the payment of minimum wages as determined by the Secretary of Agriculture. The impending veto did not materialize, but the President stated that he signed the bill in reliance upon a "gentlemen's agreement" that refining restrictions on the insular areas and Cuba would not be included in any future legislation.[39] The United States is thus em-

and to make benefit payments from the proceeds of the processing tax, conditioned on the elimination of child labor and the payment of minimum wages.

32. For Hawaii, Puerto Rico, and the Philippines these quotas were set at an amount equal to the average imports of refined sugar from those areas for the years 1931–1933. In the case of Cuba an arbitrary figure of 22% of the total production quota was set.

33. United States v. Butler, 297 U. S. 1 (1936).

34. The industry was naturally much disquieted. Another conference was held in Washington, but again the conflicting interests could come to no acceptable agreement.

35. PUB. RES. 109, 49 STAT. 1539 (1936).

36. 81 CONG. REC. 1694 (1937).

37. With sugar, as elsewhere in the administration of Agricultural Adjustment, the size of the benefit checks which had gone to large producing units had occasioned considerable adverse comment. See *e.g., Hearings Before Committee on Finance on H. R. 7667*, 75th Cong., 1st Sess., (1937) 33.

38. See BUS. WEEK, May 8, 1937, p. 32.

39. 81 CONG. REC. APP. 2553 (1937).

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barked upon a policy of active governmental control of sugar for another three year period.[40]

The unfortunate, if inevitable, aspect of these attempts to alleviate the troubles of the sugar industry is that the proration of sugar production has necessarily been based upon the political bargaining power of the conflicting interests involved rather than on any sound economic theory. The highly organized domestic beet sugar industry, launched under tariff protection and fostered by government assistance, is in the strongest position.[41] Because of its sectionalized nature, its representatives in Congress are extremely sensitive to their constituents' demands, and its political strength, especially in the Senate, was sufficient to assure it the most favored treatment under the provisions of the Act.[42] The domestic cane producers have less representation in Congress, but, although their quota restrictions were more severe than those of the competing beet growers, they possess all the psychological advantages which producers of a domestic product enjoy over competition from the "offshore areas" or foreign countries.

The insular territories and Cuba are not, however, entirely devoid of support. Puerto Rico and Hawaii have no voting strength in Congress, but are compensated to some extent by the sentimental interest which this country has always had in treating its territories and possessions with equality and fairness so as to avoid any stigma of imperialism or colonial exploitation. The Department of the Interior is especially vigilant in protecting the interests of the insular areas.[43] The United States has felt a similar sentimental concern over Cuba because of the ties engendered by the Spanish War and fostered by the Platt Amendment.[44] But undoubtedly of more significance here has been the influence of the tremendous amount of American

40. The restrictions on imported refined sugar extend only through the first two months of 1940. This was a compromise with the bitter opposition to this feature of the law.

41. Far Western farmers are organized in the National Beet Growers Association; the producers of the Middle West are affiliated in the Farmers and Manufacturer's Beet Sugar Association.

42. When the Jones-Costigan Act was before Congress it was necessary to enlarge the suggested quota for the beet area and to fix the actual amount in the terms of the bill itself so as to prevent the beet interests from defeating the legislation entirely. They were not quite so articulate when the Sugar Act was being debated, having failed in each year to produce the quota which the former Act allotted them. Compare *Hearings, supra* note 7, at 40 *et seq.*, with *Hearings, supra* note 37, at 140 *et seq.*

43. The Division of Territories and Island Possessions of the Department of the Interior is in direct charge of insular affairs. Their chief concern was that the restriction on imported refined sugar set an unfortunate precedent for discrimination against the territories in violation of traditional American principles. See *Hearings, supra* note 37, at 129, 132 *et seq.*

44. The original Platt Amendment, 31 STAT. 897 (1901) was incorporated in the formal Treaty of Relations, 33 STAT. 2248 (1903). This treaty was abrogated by a new treaty negotiated in May, 1934, 48 STAT. 1682 (1934).

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capital invested in Cuba both in sugar and in other enterprise.[45] In addition, the Department of State favors a liberal attitude toward Cuban sugar as the only means of bolstering Cuba's reciprocal trade with this country.[46] Of all the off-shore areas the Philippines are at present in the most unenviable position. Their production was restricted more severely than any other area by the quotas imposed by the Jones-Costigan Amendment and the Sugar Act of 1937. Moreover, due in large measure to the activities of the beet sugar interests, which were desirous of freeing themselves from the competition of Philippine sugar,[47] the islands are well on their way to a status of independence. But under the terms of the Independence Act,[48] they are required to impose an export tax on their sugar beginning in 1940, and after 1945 Philippine sugar will pay the full duty. Unless the terms of the Act are altered,[49] the Philippines are faced with the prospect of a steadily decreasing American market for their sugar crop and concomitant severe economic dislocation.[50]

The domestic cane sugar refiners of the Eastern seaboard, popularly known as the "Sugar Trust," are the last of the interests involved. This group also suffered from the overexpansion of the World War, and since that time they have been operating at little more than fifty percent of their capacity.[51] Their exports of refined sugar, built up by the wartime demand, have dwindled to almost nothing with the return to normal of European beet sugar production;[52] and the depression has meant a declining consumption at home.[53] Their chief grievance, however, has been the influx of competing refined

45. One pre-depression estimate placed the total at well over a billion dollars of which 600 million was invested in sugar. See JENKS, *op. cit. supra* note 11, at 281 *et seq.*

46. The value of our exports to Cuba fell from 191 million dollars in 1924 to 22 million in 1933. Sugar proration and the Trade Agreement increased the value to 55 million in one year and to 64 million in two. The State Department vigorously opposed the further limitation on Cuban refined sugar under the Sugar Act as violative of the trade agreement, which was based on the assumption that sugar quotas would not be changed to Cuba's disadvantage. See *Hearings, supra* note 37, at 177 *et seq.*

47. See COHN, PICKING AMERICA'S POCKETS (1936) 69 *et seq.*

48. 48 STAT. 456, 48 U. S. C. § 1231 *et seq.* (1934).

49. The Independence Act provides for a trade conference which may formulate recommendations as to future trade policies. Thus authorized, a Joint Preparatory Committee on Philippine Affairs has proposed the extension of trade preferences through 1960. N. Y. Times, April 6, 1938, p. 10, col. 3. However, its recommendations will require Congressional approval to become effective.

50. UNITED STATES TARIFF COMM., REPORT, *op. cit. supra* note 9, at 60 *et seq.*

51. This was the figure accepted by the Supreme Court in The Sugar Institute, Inc. v. United States, 297 U. S. 553, 574 (1936).

52. Exports of refined sugar dropped from 918,000 tons in 1922 to 49,000 in 1932. See UNITED STATES TARIFF COMM., REPORT, *op. cit. supra* note 15, at 97.

53. Domestic consumption dropped nearly three-quarters of a million tons between 1929 and 1932. *Id.*, at 93.

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sugar from Hawaii, Puerto Rico, the Philippines, and Cuba.[54] After attempts to raise the tariff on refined sugar had failed,[55] they concentrated their efforts upon limiting the importation of the refined product from these areas. This was done in the face of determined opposition from the interested administrative departments, from the islands, and from Cuba; there were cries of discrimination against the territories and unfairness to Cuba, allegations of monopolistic activities,[56] and accusations of an alliance with the beet sugar interests,[57] but the sugar refiner's lobby has been characterized as the most powerful pressure group in Washington,[58] and their demands were recognized.

Years of artificial stimulation of the domestic sugar industry combined with the disastrous aftermath of the war have probably rendered proration inevitable; but the impact of opposing pressure groups, necessitating proration upon the basis of political strength, has created a fundamentally wasteful solution in terms of the economic production and distribution of sugar as a commodity. To be sure, the domestic producing areas themselves have benefited from the legislation. The price of raw sugar has been raised for all producers;[59] the domestic beet and cane areas are protected against more efficiently produced sugar; Cuba is shipping more sugar to the American market than it did during the latter years of the twenties;[60] the domestic refiners are protected against a further increase in imported refined sugar; and the future holds complete darkness only for the Philippines. But against these benefits we must balance the vital factor of the public interest. Protection of the domestic beet and cane producers costs the American consumer three hundred million dollars a year even after the duties collected by the

54. Imports of Cuban refined sugar increased from 4000 tons in 1925 to 490,000 tons in 1932. *Id.*, at 92, 101. Imports from the insular areas have increased in similar proportion. See AMERICAN SUGAR REFINING COMPANY — ANNUAL REPORTS, 1929–35.

55. The traditional tariff policy provided for a differential of well over two cents per pound between the duties on raw and refined sugar. In the Tariff Act of 1930 the protection for refined sugar was apparently inadvertently omitted and the result was a very small differential in favor of refined sugar. Pressure was brought to bear upon the Tariff Commission to adjust the duty, but that body, after investigation covering a period of three years, refused to recommend a change. UNITED STATES TARIFF COMM., REPORT, *op. cit. supra* note 15, at 11.

56. The record of the cane refiners under the Anti-trust laws has been used constantly as a weapon of attack. *Cf.* The Sugar Institute v. United States, 297 U. S. 553 (1936); Mermin, *Sugar—A Rugged Collectivist* (1936) 31 ILL. L. REV. 320.

57. *E.g.*, the statement of the President when he signed the Sugar Act. 81 CONG. REC. APP. 2553 (1937).

58. See NEW REPUBLIC, Aug. 18, 1937, p. 33.

59. The total duty-paid price for raw sugar averaged 3.62 for 1936 as opposed to 2.92 for 1932. DALTON, *op. cit. supra* note 8, at 279.

60. But Cuba is still confronted with the problem of reorganizing her domestic economy. The total market for Cuban sugar is at present about 3 million tons. The island's capacity is 6 million tons. See FOREIGN POLICY ASSOC., REPORT, *op. cit. supra* note 11, at 294 *et seq.*

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Treasury have been discounted.[61] No attempt is made in the present scheme of regulation to encourage production in those fields which can produce sugar most economically and to discourage it in the fields which require subsidization. Thus, despite the inefficiency and expensiveness of the beet sugar industry and the well nigh intolerable working conditions in the beet fields,[62] the latter area is the only one not really restricted by the quotas which have been imposed.[63] The most efficient producing areas have received the most drastic restrictions. A proration system has been devised which prohibits the State of Florida, the only area on the continent which could produce sugar profitably without a tariff or direct subsidy, from producing more than fifty percent of its own intrastate consumption. Moreover, the federal government has assisted in increasing the supply of sugar by spending enormous sums on research, irrigation, and reclamation during a period when production was already far outstripping consumption.[64] As a consequence of these measures, legislation ostensibly enacted for the relief of domestic farmers results in a net loss to them.[65] But the repercussions of our present mode of regulation are not limited to these domestic complications. The Philippines have been virtually forced into independence in order to be free of their efficiently produced sugar; in return an outright gift of some fifty million dollars is made to the Philippine Treasury—a gift highly suggestive of a salve to the Congressional conscience.[66] It is in the light of such considerations that the present solution is to be heartily condemned.

61. Prior to the proration of sugar production by Congress, the price of raw sugar was the basic, or world price, plus the Cuban duty. Cuban sugar had pushed all other foreign sugar from the market as early as 1912. The full duty thereupon ceased to be operative upon the price and Cuba lost the benefit of the 20% tariff differential granted by the Treaty of 1903. After the quota system was inaugurated, the price of raw sugar was determined by the world price plus the full duty, plus a premium due to the restriction of production caused by the quota system itself. Cuba regained the preference she had lost; all areas now reap the benefit of the consumer tax. Treasury receipts are only 15% of the present consumer contribution, having dwindled from 124 millions in 1925 to 35 million in 1935, and sugar has become of limited importance as a source of Federal revenue. See DALTON, *op. cit. supra* note 8, at 278 *et seq.*; ELLIS, *op. cit. supra* note 12, at 148 *et seq.*; *Hearings, supra* note 37, at 150.

62. See THOMAS, HUMAN EXPLOITATION (1934) 251 *et seq.*

63. See note 42, *supra.*

64. As perhaps the most recent example, the Department of Agriculture by the introduction of new varieties of cane in Louisiana, doubled the yield per acre between 1928 and 1936. *Hearings, supra* note 37, at 28.

65. The value of the beet sugar crop at the world or base price is less than the consumer tax paid by the farmers—to say nothing of the total population—of the United States. *Id.*, at 197 *et seq.*; COHN, *op. cit. supra* note 47, at 72.

66. The Revenue Act of 1934 § 602½, [48 STAT. 763, 26 U. S. C. § 999 (1934)] imposes a three cent tax on domestic processing of Philippine cocoanut oil and provides that the revenue from such taxes shall be held as a separate fund and paid to the Philippine Treasury. Similarly, the proceeds of the excise tax on Philippine sugar under § 1173 of the Sugar Act are to go to the Philippine government for economic rehabilitation, provided none of the money is used for benefit payments to Philippine

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It is clear that in terms of economic distribution, domestic production should be retired and a fundamentally unsound utilization of capital and labor resources be terminated. This country could make an outright gift to the domestic producers of the full value of their crop during the transition to other channels of production and still save substantial amounts over the present system, which taxes the consumer three hundred millions in order to produce less than seventy million dollars worth of domestic beet and cane sugar. Nor would the retirement of domestic production result in a shortage injurious to the consumer. If quota restrictions were removed, Cuba alone could produce enough sugar to satisfy our domestic needs.[67] Even though it be admitted that free trade is a dead issue[68] and that the domestic industry must be maintained, a system of direct subsidies would be far more beneficial to the public interest. Bounties could thus be paid to the various producing areas in proportion to their costs of production instead of raising prices to a point covering the highest costs—the present solution, which necessarily gives inordinate returns to the low-cost areas.[69]

But if the sensible solution is clear, it is equally clear that such a solution is impossible of attainment in this country. In the first place, there is no highly organized consumer pressure group, and consumer education is sadly lacking.[70] The enormous tax which the consumer pays on his sugar is effectively disguised in the form of tariffs and quota restrictions. Secondly, there are numerous psychological factors which render the continuance of the present system a practical certainty. The feeling is intense in many quarters that we must foster our domestic sugar industry, regardless of cost, in order to be prepared against a shortage in case of war.[71] This argument, however, overlooks the small percentage of our consumption needs filled at home as

sugar producers. Such a salve is constitutional. Cincinnati Soap Co. v. United States, 301 U. S. 308 (1937).

67. See note 60, *supra*.

68. In 1914, Congress reduced the duty on sugar and provided that it should go on the free list in 1916, but protectionist strength increased sufficiently in the mid-term elections of 1914 to prevent the policy from being carried out. In the recent debates over the Jones Costigan Act and the Sugar Act there was not a whisper of the possibility of free trade in sugar.

69. The present Sugar Act employs this principle to a certain extent in that benefits are supposedly paid producers in relation to their costs of production. But the low cost areas still receive the benefits from a tariff aimed at protection of the highest cost areas, and all areas receive the benefits of the price enhancement due to the quota restrictions. See DALTON, *op. cit. supra* note 8, at 281.

70. The Fair Tariff League, an organization purporting to have two million members, has repeatedly appeared before Congressional committees handling sugar legislation, but apparently their efforts have been of little avail.

71. This feeling is of course attributable to the reaction from the World War. But the shortage of sugar in the United States was more a "war scare" than a reality. See JENKS, *op. cit. supra* note 11, at 196 *et seq.*

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well as the proximity of the Cuban supply. Furthermore, sugar, as virtually the only basic agricultural commodity of which the continent does not raise an exportable surplus, has long been the spearhead of American agricultural protectionism. The American Farm Bureau and the National Grange will rally the farmers to the slogan, "The American Market for the American Farmer," even if it is more costly to them as a group to do so. The idea that "free trade" would utterly destroy the entire domestic industry is everywhere accepted as absolute truth, even though recognized economists have estimated from time to time that substantial portions of it would survive without tariff protection.[72] The cane refiners have employed equally potent symbols in their fight to restrict the importation of refined sugar. Premised on the necessity of protecting the "home industry" from "cheap tropical labor" and of favoring "America first" as against a "foreign country," their propaganda has produced the desired results — despite the facts that labor costs in refining sugar are lower than in any other major industry,[73] that the Tariff Commission twice refused to recommend an increase in the tariff on refined sugar, since their investigations disclosed that the cost of refining sugar in Cuba was equal to the cost of refining it in this country,[74] and that the insular refiners and their laborers are for the most part American citizens and more than half of the Cuban refineries are American owned and operated.[75]

Lastly, it is doubtful if the base for a new solution to the problem can be laid by subjecting the present Sugar Act to an attack on constitutional grounds. The provisions for benefit payments conditioned on the abolition of child labor and the payment of minimum wages are seemingly a re-enactment of the essential provisions of the invalidated Agricultural Adjustment Act, but in view of the recent decisions of the Supreme Court involving the taxing power[76] and the commerce clause[77] and the drastic change in that body's personnel the validity of this portion of the present legislation would seem assured.[78] A previous attack upon the constitutionality of this type of legislation failed when Hawaii contested the validity of the quota

72. These estimates vary from 50% to 80% for the beet industry and 10% to 40% for the Louisiana cane industry. Apparently no recent estimates have been made, however. See ELLIS, *op. cit. supra* note 12, at 155, n. 9.

73. Labor costs in refining sugar run as low as 5%. Domestic cane refineries employ a total of approximately 13,000 men.

74. UNITED STATES TARIFF COMM., REPORT, *op. cit. supra* note 15, at 108 *et seq.*

75. The largest refinery in Cuba representing an investment of 40 million dollars, is owned and operated by the Hershey Corporation of Hershey, Pa.

76. Steward Machine Co. v. Davis, 301 U. S. 548 (1937) (Social Security Act).

77. Associated Press v. N. L. R. B., 301 U. S. 103 (1937) (Wagner Act).

78. In addition to benefit payments and crop restriction contracts, the recently adopted Agricultural Adjustment Act of 1938 provides for proration and quotas for all basic crops when production sufficiently exceeds consumption requirements. See N. Y. Times, Feb. 15, 1938, p. 6, col. 3.

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assigned her under the Jones-Costigan Amendment in 1934.[79] The Supreme Court of the District of Columbia held that the discretion vested in the Secretary of Agriculture was not an excessive delegation of legislative power and that the fixing of an import quota did not deprive the Hawaiian producers of property without due process of law.[80] Because of a gentleman's agreement with the Secretary of Agriculture the decision was not appealed.[81] Perhaps the most vulnerable portion of the present Sugar Act is the restriction on imported refined sugar. Since there are no equivalent restrictions on any continental area, the question of arbitrary discrimination against the territories is thus raised. It has been stated that the principle to be derived from the diversity of opinion in the Insular Cases[82] is that in the case of an unincorporated territory the power of Congress to legislate is restrained only by those fundamental principles which protect life, liberty, and property;[83] in the case of an incorporated territory Congress is limited by all provisions of the Constitution applicable to the territories.[84] Under this rule, even though Puerto Rico is unincorporated[85] and Hawaii incorporated,[86] the rights of both would be involved, for the question would be one of due process. The possible invalidation of this portion of the Act, however, would in nowise affect the primary features concerning the proration of production and distribution of raw sugar; and, as a means of preventing the continuance of the domestic refiner's monopoly, of frustrating the power of their lobby at Washington, and of removing the unfortunate precedent of discrimination against the territories, it would in fact be a highly desirable consummation. The rest of the Act is, as a practical matter, apparently immune from attack, since all the interests involved, with the possible exception of Florida,[87] are receiving sufficient benefits from the operation of the law to negative any desire on their part to attack its validity.

79. For summaries of Hawaii's grievances and her reasons for taking judicial action, see Cooke, *The Jones-Costigan Act as it Affects Hawaii* (1934); Garfield, *Hawaii's Basic Reasons For Contesting the Costigan-Jones Amendment* (1934).

80. Ewa Plantation Co., *et al.* v. Wallace, 62 Wash. Law Rep. 830 (1934). In retrospect, the failure of Congress to fix the quotas for all areas might well make the legislation vulnerable under the standard later laid down by the Supreme Court in Panama Refining Co. v. Ryan, 293 U. S. 388 (1935) and Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935). In the Sugar Act this contingency is removed; quotas for all areas are set by the Act itself.

81. See *Hearings, supra* note 37, at 11.

82. De Lima v. Bidwell, 182 U. S. 1 (1901); Downes v. Bidwell, 182 U. S. 244 (1901).

83. Board of Public Utility Commissioners v. Ynchausti & Co., 251 U. S. 401, 406 (1920); Soto *et al.* v. United States, 273 Fed. 628, 633 (C. C. A. 3d, 1921); Neuss, Hesslein & Co., v. Edwards, 30 F. (2d) 620, 621 (C. C. A. 2d, 1929).

84. Alaska v. Troy, 258 U. S. 101, 110 (1922).

85. Balzac v. Puerto Rico, 258 U. S. 298 (1922).

86. 31 STAT. 141 (1900), 48 U. S. C. § 495 (1934).

87. Florida, having spent much time and money in draining and dredging the Everglades preparatory to planting sugar cane, is especially bitter at legislation which compels the land to lie idle. See *Hearings, supra* note 37, at 31 *et seq.*

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The future of the sugar problem under government control is of course pure speculation. But if, as seems inevitable, legislation of the type of the Sugar Act continues, certain trends will undoubtedly make themselves felt. The power of the beet sugar interests will probably defeat attempts to freeze that industry at its present level, to say nothing of attempts to restrict or retire it. At present, beet sugar production can expand slightly before its quota is reached; in the future new quotas will no doubt be similarly favorable. The increase in the production of beet sugar will tend to replace Philippine sugar, which, unless some new trade agreement is effected, will become less and less a factor in the American market. This gradual replacement of efficiently produced sugar by inefficiently produced sugar may well tend to raise the price to the consumer despite the demonstrated ability of the Department of Agriculture to control prices through its estimates of consumption requirements.[88] And although it is the President's "understanding" that in the future the restrictions on refined sugar from the territories and Cuba are to be removed, they are more than likely to remain and may well tend to become more and more severe. While experience has taught that efforts to incite action by consumers will meet with disappointment and defeat, the only alternative to increased control of production along present uneconomic lines seems to be consumer education and consumer rebellion.

88. In October, 1937, the Secretary of Agriculture raised his estimate of consumption requirements and reallotted the excess. The depressing effect upon prices was immediate. See BUS. WEEK, Oct. 2, 1937, p. 28.

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